

Moving Ahead  
for Progress in  
the 21<sup>st</sup> Century:  
*IMPLICATIONS  
FOR OREGON*



# Moving Ahead for Progress in the 21<sup>st</sup> Century

## Implications for Oregon

**December 2012**

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[www.oregon.gov/ODOT/GOVREL/Pages/MAP-21.aspx](http://www.oregon.gov/ODOT/GOVREL/Pages/MAP-21.aspx).



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## Executive Summary

Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21) reauthorizes federal highway, transit, and transportation safety programs for federal fiscal years (FY) 2013 and 2014 and makes significant changes to federal transportation policy.

**Highway Funding:** Funding levels for the highway program are essentially flat: In FY 2013, MAP-21 provides \$40.4 billion in highway funding, growing to \$41 billion in FY 2014. Oregon will receive a total of \$483 million in federal-aid highway apportionments in FY 2013 and \$487 million in FY 2014, a larger share of funding than under SAFETEA-LU.

**Highway Programs:** MAP-21 significantly consolidates the highway program structure. Most setasides, small formula programs and discretionary programs—including High Risk Rural Roads, Safe Routes to School and Scenic Byways—are eliminated as separate programs; however, most types of projects funded under these programs will be eligible under other programs. Virtually all funding will flow to states under five major formula programs, with Oregon's estimated FY 2013 funding:

- National Highway Performance Program: \$288 million
- Surface Transportation Program (STP): \$132 million
- Highway Safety Improvement Program: \$29 million
- Congestion Mitigation and Air Quality Improvement (CMAQ) Program: \$19 million
- Transportation Alternatives (previously Transportation Enhancements): \$9 million

**National Highway System:** The majority of highway funding will be focused on preserving and improving the National Highway System (NHS) under the National Highway Performance Program (NHPP), which combines the Interstate Maintenance and National Highway System programs and a portion of Bridge funding.

**Local Funding:** Local governments will receive significant funding for transportation projects. Under the Surface Transportation Program, funding will be suballocated to large metropolitan planning organizations (MPOs) and other areas of the state in a manner similar to current practice, and MPOs will get slightly more than they did in recent years. Local governments will have continued opportunities to receive funding for bicycle/pedestrian projects under the Transportation Alternatives Program (TAP). A number of small programs that provided funding to local governments, such as High Risk Rural Roads, are eliminated.

**Bridges:** Without a separate Bridge program, bridges on the National Highway System will be funded under the NHPP; bridges not on the NHS will be funded under STP. ODOT will continue to set aside funding under the Local Bridge Program. The 15 percent setaside for bridges of the federal-aid highway system on low volume local roads is retained, as is

the waiver that Oregon has used to ensure that local governments are not required to overinvest in these bridges on lower volume roads.

**Bicycle and Pedestrian Programs:** The Transportation Enhancements program will become the Transportation Alternatives Program (TAP), and nationwide two percent of total highway funds will be set aside for TAP. Funding will be suballocated to metropolitan planning organizations with populations larger than 200,000. Although the Recreational Trails and Safe Routes to School programs are eliminated as separate programs, TAP funding can be used for both types of projects. Funding for programs focused on bicycle and pedestrian projects will fall, however, as the TAP funding is less than the total formerly dedicated to the three major bicycle/pedestrian programs. However, states retain the flexibility to spend more on these projects than required, and Oregon has committed to continuing funding at SAFETEA-LU levels for all three bicycle/pedestrian programs through 2015.

**Financing for Major Projects:** MAP-21 expands the Transportation Infrastructure Finance and Innovation Act (TIFIA) federal credit program to \$750 million in funding in FY 2013 and \$1 billion in FY 2014 (from \$122 million in FY 2012). This will increase the likelihood that the Columbia River Crossing (CRC) will receive a significant loan with favorable financing terms. The Projects of National and Regional Significance (PNRS) program is reauthorized, with \$500 million in funding authorized (but not provided out of the Highway Trust Fund). The CRC hopes to receive funding from PNRS for future interchange improvements.

**Transit Funding:** Transit will receive \$10.6 billion in FY 2013 and \$10.7 billion in FY 2014, which is similar to FY 2012 funding levels. Oregon will receive about \$97 million in transit formula funding in FY 2013, an increase from 2012.

**Transit Programs:** MAP-21 will provide assistance to transit providers under the following formula grant programs:

- Urbanized Areas
- Rural Areas
- Elderly and Disabled (which includes the former New Freedom Program)
- Bus and Bus Facilities (previously a discretionary grant program)
- State of Good Repair (formerly Fixed Guideway Modernization)

MAP-21 will allow transit systems in urban areas of over 200,000 that operate fewer than 100 buses in peak service to use a portion of their Urbanized Area funds for operating expenses.

**Federal Lands Highways:** The Forest Highways Program becomes the Federal Lands Access Program, with the focus expanded from providing access to national forests to

include all federal lands. Oregon will receive about \$24 million under the program in both FY 2013 and FY 2014, slightly more than the state received in recent years.

**Safety Programs:** MAP-21 creates six incentive programs that provide funding to states that implement specified safety programs: Occupant protection, traffic information, impaired driving, distracted driving, motorcyclist safety, and graduated driver licenses. Oregon is not expected to qualify for the graduated driver license program and may or may not qualify for the distracted driving program. Performance measures will be applied to these programs.

**Freight Policy:** MAP-21 will establish a national freight policy, including the designation of a freight network and development of a freight strategic plan that should help direct strategic investments in freight projects. MAP-21 also encourages states to develop state freight plans and to have a freight advisory committee; Oregon already has both.

**Streamlining Project Delivery:** MAP-21 makes significant changes to environmental process requirements under the National Environmental Policy Act (NEPA), including:

- Allowing states to acquire property before completion of the environmental review process.
- Classifying more projects—including those with small amounts of federal funding and those within the existing operational highway right of way—as “categorical exclusions” that require less analysis and documentation of impacts.
- Allowing planning products to be used in the NEPA process.
- Allowing for programmatic approaches to environmental mitigation.

**Performance Management:** For the first time the federal surface transportation program will include performance measures and targets that will move the program to a more performance-based system. US DOT will establish performance measures and standards generally tied to the major highway programs, including bridge and pavement condition on the National Highway System, freight movement on the Interstate, fatalities and serious injuries, congestion, and emissions. After US DOT establishes measures, states and MPOs will set performance targets and will be required to report biennially on their progress toward meeting these targets.

**National Highway System Expansion:** MAP-21 expands the NHS to include urban and rural principal arterials, the main thoroughfares that carry heavy volumes of traffic. About 600 miles of Oregon roads were added to the NHS, including a significant number of local roads. ODOT has formed a National Highway System Expansion Working Group consisting of technical experts within ODOT, representatives of FHWA, and local governments that will work through these issues.

## Acronyms Used In This Report

AASHTO	American Association of State Highway and Transportation Officials
CDL	Commercial driver license
CE	Categorical exclusion
CMAQ	Congestion Mitigation and Air Quality Improvement Program
DMV	ODOT Driver and Motor Vehicle Services Division
EA	Environmental assessment
EIS	Environmental impact statement
ER	Emergency Relief Program
FEIS	Final environmental impact statement
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FTA	Federal Transit Administration
FY	Fiscal Year
HSIP	Highway Safety Improvement Program
IRI	International Roughness Index
ISTEA	Intermodal Surface Transportation Efficiency Act
MAP-21	Moving Ahead for Progress in the 21 <sup>st</sup> Century
MCSAP	Motor Carrier Safety Assistance Program
MCTD	ODOT Motor Carrier Transportation Division
MOE	Maintenance of effort
MPO	Metropolitan planning organization
NEPA	National Environmental Policy Act
NFN	National freight network
NHPP	National Highway Performance Program
NHS	National Highway System
NHTSA	National Highway Traffic Safety Administration
ODOT	Oregon Department of Transportation
OFP	Oregon Freight Plan
OTIA	Oregon Transportation Investment Act
OTE	Oregon Travel Experience
PFN	Primary freight network
PNRS	Projects of National and Regional Significance
RFP	Request for proposals
ROD	Record of decision
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SHRP 2	Strategic Highway Research Program
SHSP	Strategic Highway Safety Plan
SPR	State Planning and Research Program

## MAP-21: Implications for Oregon

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SRTS	Safe Routes to School
STIP	Statewide Transportation Improvement Program
STP	Surface Transportation Program
TAP	Transportation Alternatives Program
TE	Transportation Enhancements
TEA-21	Transportation Equity Act for the 21 <sup>st</sup> Century
TIGER	Transportation Investment Generating Economic Recovery
TSAP	Transportation Safety Action Plan
TSD	ODOT Transportation Safety Division
US DOT	United States Department of Transportation
UTC	University Transportation Center
VMT	Vehicle miles traveled

## Introduction

In July 2012, President Barack Obama signed into law Moving Ahead for Progress in the 21<sup>st</sup> Century, or MAP-21, the new federal surface transportation act. MAP-21 authorizes federal highway, transit and safety programs through September 30, 2014 and sets policies for the nation's surface transportation system, superseding the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

SAFETEA-LU and its predecessor, the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) made relatively minimal changes to the basic structure set in place in 1991 by the Intermodal Surface Transportation Efficiency Act (ISTEA). MAP-21, on the other hand, wiped the slate clean, significantly restructuring the surface transportation programs and making major policy changes in areas from project delivery to freight to performance management.

MAP-21 maintains current funding levels for highways, transit, and safety. To continue funding the federal surface transportation programs at current levels, MAP-21 transferred general fund resources into the Highway Trust Fund. This was the fourth such transfer since 2008; these transfers now total about \$55 billion. However, because MAP-21 did not raise the user fees that feed the Highway Trust Fund, it did nothing to address the trust fund's long term fiscal imbalance.

As a result, in 2015 and beyond, Highway Trust Fund revenues will be insufficient to cover current program funding levels, and Congress will have to bring funding into line with available resources, either by providing additional resources or cutting funding by 25 percent or more. This creates a significant risk of cuts to the funding streams that help ODOT and local governments preserve and improve their transportation systems to support safe, economically vital, and livable communities.

### About This Report

This report will provide an in-depth discussion of the program and policy changes made by MAP-21 and how they will impact Oregon, including some of the key decisions ODOT has made on implementing these programs and policies. However, at the time of publication the Federal Highway Administration and Federal Transit Administration had released guidance on only a handful of topics, and a number of major rulemakings remain to be completed. As a result, many important issues remain unresolved, and ODOT will be faced with numerous implementation decisions in coming years.

# Highway and Active Transportation Programs

MAP-21 makes significant changes to the programs that fund highway and active transportation projects. MAP-21 consolidates highway programs into just a handful of major formula programs, eliminating or consolidating most set-asides, small formula programs, and nationwide discretionary programs, as well as some of the major highway programs. Most funding will flow to states and metropolitan planning organizations under just five major formula programs:

- National Highway Performance Program
- Surface Transportation Program
- Highway Safety Improvement Program
- Congestion Mitigation and Air Quality Improvement Program
- Transportation Alternatives Program

Although many programs are eliminated, in most cases projects that were eligible under these eliminated programs remain eligible for funding under other programs.

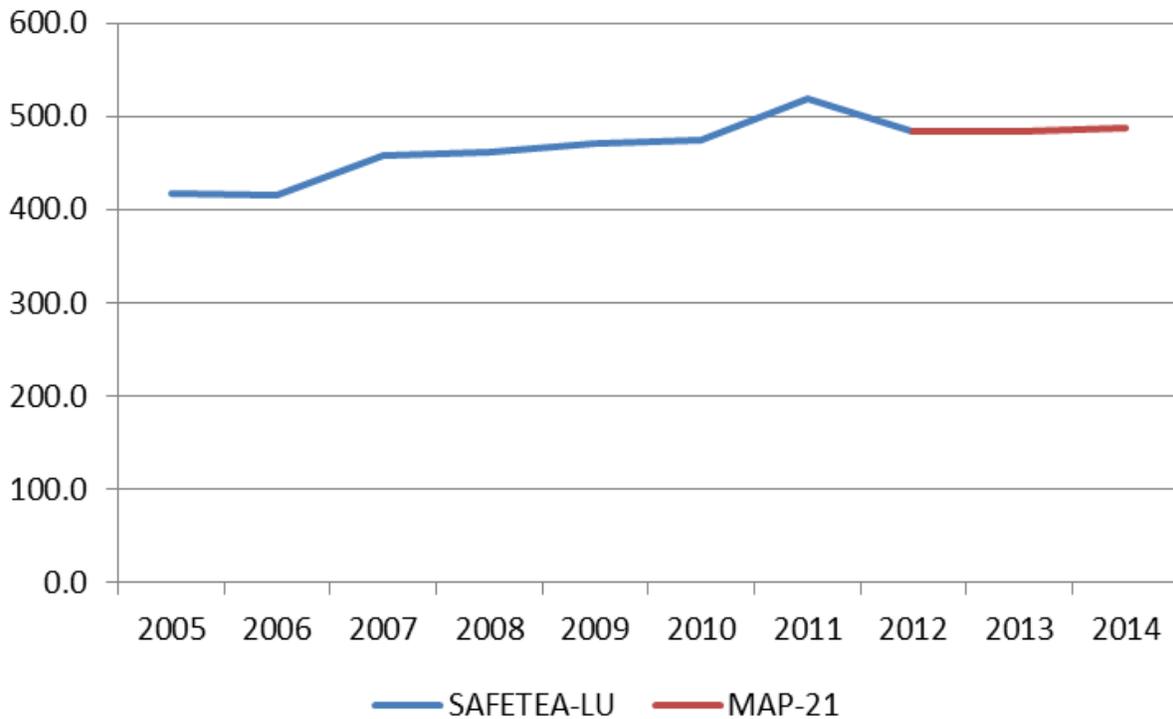
Due to formulas in MAP-21 and implementation decisions made by ODOT, local governments are likely to receive a slightly larger share of federal highway funding than in the past. Even though MAP-21 eliminates a number of programs for local governments and cuts funding for others, ODOT has agreed to honor the commitment of funding to programs and projects in the 2012-15 Statewide Transportation Improvement Program (STIP), particularly for the active transportation programs that fund bicycle and pedestrian projects.

For a chart comparing the federal highway program structure between SAFETEA-LU and MAP-21 and showing Oregon's federal highway funding in the various programs, please see the chart Oregon Federal Highway Funding at the end of this report.

## Highway Program Funding

The funding level for the federal-aid highway program is essentially flat compared to 2012 and down about 7 percent from 2011 levels. In federal fiscal year (FY) 2013, \$39.4 billion is authorized nationwide from the Highway Trust Fund, and in FY 2014 \$40 billion is authorized. Each state will continue to receive the same share of funding it received in formula apportionments and allocations in FY 2012, with an adjustment to ensure that each state receives a share of funding equal to 95 percent of its share of contributions to the Highway Trust fund.

### Oregon Federal Highway Administration Apportionments



Oregon will receive an estimated \$483 million in federal-aid highway apportionments in FY 2013 and \$487 million in FY 2014. While this is less than the state received in 2011, this is a higher share of formula funding than Oregon received under SAFETEA-LU, primarily because each state’s funding is based on both formula apportionments and earmarks under SAFETEA-LU. As a result, Oregon will continue to receive funding based on “above-the-line earmarks” provided under SAFETEA-LU, particularly \$200 million in funding for Oregon’s bridges that was secured by Congressman DeFazio to complement the Oregon Transportation Improvement Act (OTIA) III State Bridge Program.

### National Highway Performance Program

The National Highway Performance Program (NHPP) combines funding from the Interstate Maintenance, National Highway System, and Bridge programs to create a program focused on preservation and improvement of the National Highway System (NHS). Oregon will receive an estimated \$288 million in NHPP funding in FY 2013, amounting to nearly 60 percent of the state’s highway program funding.

### Surface Transportation Program

The second largest highway program will be the Surface Transportation Program (STP), the primary program that funds local government and non-highway projects. Oregon will receive approximately \$132 million in STP funding in FY 2013, about 17 percent higher than in FY 2012, largely because some of the funding from the eliminated Bridge program was shifted to STP to repair and replace bridges that are not on the National Highway System. Half of STP funding will be subject to suballocation to metropolitan planning organizations (MPOs) with a population over 200,000 and other areas of the state; MPOs will receive a funding increase compared to FY 2012, even as overall funding remains flat.

Eligibility under STP is expanded to include some of the activities for which separate programs were eliminated, including recreational trails, and truck parking facilities. STP funding can also be used for surface transportation projects within a port facility that are necessary to facilitate direct intermodal access into and out of the port; this provision will likely require clarification from FHWA.

ODOT currently shares STP funding with each county, metropolitan planning organization and city with a population above 5000 that lies outside an MPO under the terms of the STP Working Agreement. Formulas in the working agreement govern the annual distribution of tens of millions of dollars of STP funds. This agreement is in the process of being renewed, and local governments will continue to receive STP funds at similar levels to recent years. As in the past, the working agreement will adjust distribution of STP funds based on the increase or decrease in Oregon's overall federal highway program obligation limitation.

### Bridges

The Bridge program is eliminated, and bridges on the NHS will be funded out of the NHPP, while non-NHS bridges will be funded out of STP resources. The off-system bridge setaside for projects on low-volume roads that are not on the federal-aid highway system is retained: each state is required to obligate an amount for these projects equal to 15 percent of the Bridge funding they received in 2009; however, as in prior years the Federal Highway Administration (FHWA) can issue a waiver of this requirement. Oregon local governments would prefer flexibility in selecting bridge projects so that they are not required to overinvest in projects on lower volume roads, so Oregon will seek a continued waiver of this requirement.

In the past, ODOT shared a portion of federal Bridge program funds with local governments based on need. Though MAP-21 eliminates the Bridge program, ODOT has agreed to continue funding the Local Bridge Program into the future at levels similar to recent years, with a formula for allocating funding included in the STP Working Agreement. Projects will continue to be recommended for OTC approval by the Local Agency Bridge Selection Committee, a joint state/local committee with members from ODOT and representatives of the Association of Oregon Counties and League of Oregon Cities.

### Active Transportation

The Recreational Trails, Safe Routes to School (SRTS) and Transportation Enhancements (TE) programs are merged into the Transportation Alternatives Program (TAP). Nationwide 2 percent of total highway funds will be set aside for TAP, a significant reduction from previous years. In Oregon, this amounts to a cut of about 38 percent when comparing the \$14.4 million in FY 2012 TE, SRTS and Recreational Trails funding with the \$9 million in FY 2013 TAP funding.

TAP funds can be used for safe routes to school and recreational trails projects, as well as most types of projects previously eligible for TE funding. However, eligibility is modified to remove activities like transportation museums and visitors centers and add environmental mitigation; these eligibility changes are likely to have minimal impacts on Oregon projects, as ODOT has awarded most funding to bicycle and pedestrian projects that remain eligible for funding. A small number of TE projects that no longer qualify for TE funds may have to rely on unobligated TE funds from SAFETEA-LU, which retain their original eligibility.

TAP funding is set aside statewide for recreational trails projects unless the state opts out. For 2013 through 2015, ODOT has agreed to continue funding for the program, which is administered by the Oregon Parks and Recreation Department, as allocated in the STIP. After the setaside for recreational trails, half of the remaining funding is suballocated by population, and MPOs with populations larger than 200,000 based on population will receive direct allocations of funding. The Portland metro region, Salem/Keizer, and Eugene/Springfield will receive relatively modest allocations of funding to distribute.

Using the flexibility available under MAP-21, ODOT has agreed to honor existing commitments to the bicycle and pedestrian programs in the 2012-2015 STIP, which will provide about \$4 million per year more than MAP-21 provides to Oregon under TAP. In 2016 and beyond, these programs will be folded into the STIP Enhance category, though ODOT will continue to set aside funding for non-infrastructure Safe Routes to School projects (including education and enforcement activities).

### Highway Safety Improvement Program

Highway Safety Improvement Program (HSIP) funding, which pays for infrastructure projects that improve highway safety, is significantly increased, with Oregon's HSIP funding growing nearly 48 percent to nearly \$29 million in FY 2013. The Railway-Highway Crossings Program continues as a separate program funded out of the national HSIP funding. The High Risk Rural Roads Program is eliminated as a setaside, though HSIP funding can be spent on high risk rural road projects; states that see increased crashes on high risk rural roads face a requirement to obligate a set amount for these projects.

With Oregon's funding under the HSIP increased significantly and direction in MAP-21 to address safety challenges on all public roads, ODOT will increase the amount of funding available for safety projects on local roads. Through a process that is still under

development, safety funding will be distributed to each ODOT region, which will collaborate with local governments to select projects that can reduce fatalities and serious injuries, regardless of whether they lie on a local road or a state highway.

### **Congestion Mitigation and Air Quality Improvement Program**

The Congestion Mitigation and Air Quality Improvement Program (CMAQ) program will continue with relatively minor changes. Oregon will receive an estimated \$19 million in CMAQ funding in FY 2013, down about 3 percent from FY 2012. CMAQ funds can now be used for electric vehicle charging stations outside CMAQ eligible areas with air quality challenges. Performance measures and targets will be set for traffic congestion and on-road mobile source emissions, and metropolitan planning organizations with a population over one million will have to develop a performance plan that shows how they will use CMAQ funding to make progress toward achieving the targets.

ODOT is seeking clarification from FHWA about requirements included in the bill to allocate funding to diesel emission control technology for highway construction equipment within areas that are nonattainment or maintenance for small particular matter (PM2.5). This would appear to require Klamath Falls and Oakridge to spend CMAQ funds on diesel emissions reduction projects, even though transportation emissions are not a major contributor to air pollution in either area and meeting this requirement could be difficult given the limited amount of highway construction equipment in these areas.

### **Federal Lands and Tribal Transportation Programs**

#### **Federal Lands Access Program**

MAP-21 eliminates the Forest Highways Program and the Public Lands Highways Discretionary Program and creates the Federal Lands Access Program (FLAP), which provides funding over and above the state's federal-aid highway program funding. FLAP funding will be used for any state and local road (or transit facility) that is located on, adjacent to, or provides access to any type of federal land—including Bureau of Land Management tracts, national parks, and wildlife refuges; only roads on or providing access to national forests were eligible under the Forest Highways Program. This significantly expands the network of roads eligible for funding.

The formula for distributing funds among states is modified significantly, and Oregon—which previously received the largest allocation of Forest Highways funding in the nation—will receive a smaller share of nationwide funding. Nonetheless, because overall FLAP funding is increased compared to Forest Highways, Oregon will receive a boost of nearly 7 percent, to an estimated \$24 million in 2013. For the first time, federal lands projects will require non-federal match (10.27 percent of total project cost), which could cause financial hardship for local governments.

FHWA's Western Federal Lands Highways Division (WFLHD) manages the program for Oregon. Under MAP-21, distribution of funding to projects will be determined by a

committee made up of FHWA WFLHD, the state DOT, and a local government representative; staff from the Association of Oregon Counties has been selected by FHWA to fill this role. The committee will consult with applicable federal land management agencies.

### **Federal Lands Transportation Program**

Funds will be provided to roads owned by the National Park Service, Forest Service, U.S. Fish and Wildlife Service, Corps of Engineers and Bureau of Land Management under a separate Federal Lands Transportation Program. Federal land management agencies in Oregon are likely to receive relatively little of this funding because 80 percent of funding (\$240 million annually) goes to the National Park Service; the two major federal land management agencies in Oregon—the U.S. Forest Service and Bureau of Land Management—have to compete with the Army Corps of Engineers under a nationwide program of just \$30 million per year.

### **Tribal Transportation Program**

A Tribal Transportation Program will provide funding to tribal governments under a new formula. MAP-21 significantly increased the amount of funding going into this program compared to its predecessor, the Indian Reservation Roads Program. FHWA has not yet released apportionment figures for this program, so it is not clear how much funding Oregon's tribal governments will receive.

### **Transportation Infrastructure Finance and Innovation Act**

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides federal credit support—including direct loans and lines of credit—to major projects. MAP-21 expands the TIFIA program's funding sevenfold, to \$750 million in 2013 and \$1 billion in 2014. Because TIFIA's funding is used to pay a credit subsidy of about 10 percent of the loan amount, this funding level can support about \$17 billion in loans and other credit support over the two years of MAP-21. TIFIA loans generally have very favorable financing terms compared to financing available in private debt and equity markets, including lower interest rates, longer repayment periods, and lower coverage ratios.

The amount of a project's cost that TIFIA can cover increases from one third to 49 percent, though FHWA has indicated they may not provide the maximum amount to many projects. The program will no longer be a competitive, merit-based program. Instead, credit will be extended to eligible credit-worthy projects on a "first come, first served" basis, and groups of related projects can secure a "master credit agreement".

Expansion of TIFIA funding will increase the likelihood that the Columbia River Crossing (CRC) can secure a significant TIFIA loan that will leverage additional resources from tolling. The CRC may request a TIFIA loan of up to about \$1 billion. Preliminary analysis indicates that a TIFIA loan can likely leverage about 25 percent more cash from tolling than

general obligation bonds, providing a significant benefit to the project. Few other Oregon projects are likely to benefit from TIFIA.

### Projects of National and Regional Significance

The Projects of National and Regional Significance (PNRS) program, which was created in SAFETEA-LU to fund major projects with significant regional and national benefits that are difficult for a single state or group of states to fund, is authorized at \$500 million in FY 2013. However, no Highway Trust Fund resources are directly provided; funding could be provided through the appropriations process. If funded by Congress, the PNRS program could provide an opportunity for a large discretionary grant for the Columbia River Crossing.

### Historic Covered Bridges

In eliminating virtually all discretionary highway programs, MAP-21 discontinued the nationwide funding stream for historic covered bridges, which typically provided \$1 to 2 million annually to rehabilitate Oregon's historic covered bridges. However, local governments will still have opportunities to secure funding for these projects. Covered bridges that carry highway traffic are eligible for funding under the Local Bridge Program, and local governments can use their State Highway funds or STP resources for these bridges. Covered bridges that carry only pedestrian or bicycle traffic will be eligible for Transportation Alternatives Program funding under the STIP Enhance category, and local governments can also use their STP allocations on these projects. However, in the long term it is not clear whether these projects will fare well when forced to compete against other transportation priorities. ODOT plans to work with covered bridge owners to assess the long-term needs of the state's historic covered bridges, identify priorities, and determine how these historic and cultural preservation projects can be funded.

### Scenic Byways

As with historic covered bridges, MAP-21 eliminates the small nationwide discretionary grant program for scenic byways, under which Oregon was extremely successful. However, most infrastructure projects on designated scenic byways will be eligible for Enhance funding in the 2015-2018 STIP, and local governments will be able to use STP and State Highway Fund resources for these projects. ODOT will maintain a scenic byways program, though it will be reduced in size and scope. ODOT anticipates that few new scenic byways will be designated now that the prospect for receiving federal grants to fund projects has ended. ODOT will seek to develop partnerships with the travel and tourism community and scenic byways advocates to invest in marketing for existing byways.

### Emergency Relief

The Emergency Relief (ER) Program, which funds repairs to roads damaged by natural disasters, is continued. Federal lands highway projects remain eligible for 100 percent federal funding, but debris removal will be eligible for ER reimbursement only if the event is covered by a Presidentially declared emergency; in other cases, FEMA would be the

reimbursement body, and reimbursements will generally be lower than under the ER program.

### **Ferries**

The Ferry Boat program—previously a discretionary grant—becomes a small formula program funded at \$67 million annually. Oregon’s ferries— the Canby Ferry in Clackamas County, the Wheatland and Buena Vista ferries operated by Marion County, and the Westport Ferry that crosses the Columbia River into Clatsop County—will each receive a very small allocation of funding under a formula FHWA is currently developing.

## Public Transportation

As with highway and active transportation programs, MAP-21 significantly modifies the transit program structure, merging a number of small formula programs and changing a major discretionary program into a formula program. For a chart comparing the federal transit program structure between SAFETEA-LU and MAP-21 and showing Oregon's federal transit funding in the various programs, please see the Oregon Federal Transit Funding chart at the end of this report.

### Transit Funding

MAP-21 authorizes \$10.6 billion in FY 2013 and \$10.7 billion in FY 2014 for public transportation, which is similar to FY 2012 funding levels. FTA's apportionments show Oregon's transit funding increasing about 20 percent from 2012 levels to about \$97 million in FY 2013. Some of this increase is due to the shift of the 5309 Bus and Bus Facilities funding from a discretionary grant program to a formula program.

### Transit Programs

MAP-21 will provide assistance to transit providers under the following formula grant programs:

- Urbanized Areas
- Rural Areas
- Enhanced Mobility for Seniors and Individuals with Disabilities
- Bus and Bus Facilities
- State of Good Repair

### Urbanized Areas

Providers serving urbanized areas of 50,000 or more will continue to receive funding directly from FTA under the Section 5307 Urbanized Areas program. Oregon's three large urban areas will see their funding under this program remain essentially flat, while providers in smaller cities will generally see a large increase, ranging from 25 percent in Medford to nearly two-thirds in Bend. Because they were designated by the Census Bureau as urbanized areas in 2011, Albany and Grants Pass will receive allocations of 5307 funding, rather than Rural Areas funding through ODOT. MAP-21 allows transit systems in urban areas of over 200,000 that operate fewer than 100 buses in peak service to use a portion of their Urbanized Area funds for operating expenses. The Job Access and Reverse Commute program is eliminated as a standalone program, but urbanized areas are required to spend a portion of their FTA resources on these activities.

### Bus and Bus Facilities

Funding under the Bus and Bus Facilities program, which provides capital funding to replace, rehabilitate and purchase buses and related equipment and to construct bus-related facilities, is cut by about half compared to SAFETEA-LU. Under SAFETEA-LU this was a discretionary program under which FTA awarded grants, but MAP-21 turns it into a formula program. Oregon's large urbanized areas will receive direct allocations under this program, and ODOT's Public Transit Division will also receive an annual allocation of about \$1.2 million to distribute among rural areas as well as a separate block of funding to distribute among small urban areas. ODOT Public Transit will need to develop a new process for distributing these funds.

### Seniors and Individuals with Disabilities

The New Freedom (Section 5317) program is consolidated into the Enhanced Mobility for Seniors and Individuals with Disabilities Program (Section 5310) to create a single program that will fund activities designed to enhance the mobility of seniors and individuals with disabilities.

Under the 5310 program, most funding will go directly to urbanized areas with a population of over 200,000, and state DOTs will receive two separate allocations: one pot of money will be distributed among smaller urbanized areas, and another allocation will be split among non-urbanized areas. Previously all 5310 funding was provided to ODOT Public Transit to distribute. ODOT will have about \$850,000 to distribute among rural providers and \$750,000 to distribute to small urban areas in FY 2013. ODOT Public Transit will develop a process to allocate these resources among small urban providers.

MAP-21 makes this program subject to the standard non-federal match rate of 20 percent. Under SAFETEA-LU Oregon projects were subject to a reduced match rate of 10.27 percent, and doubling required match could cause financial challenges for some providers. Operating assistance is now an eligible expense, with a 50 percent non-federal match rate; however, Oregon was one of six states that had this authority under SAFETEA-LU in a special pilot program.

### Rural Areas

The Rural Area program (Section 5311), which provides funding to states to distribute to transit providers in small towns and rural areas (defined as areas outside urbanized areas of 50,000 or more) will grow in size. Oregon's funding is estimated at nearly \$12 million for FY 2013, an increase of about 19 percent over 2012 levels. However, MAP-21 reduces the amount of funds states can use for program administration from 15 percent to 10 percent, which could cause challenges for ODOT's Public Transit Division.

Tribal Transit funds are provided as a setaside under this program. Most of these funds will be directed by to tribal governments under a formula that FTA has not yet developed; as a result, it's not clear how much funding Oregon tribes will secure.

### State of Good Repair

MAP-21 transforms the Fixed Guideway Modernization program, which provides funding to help urbanized areas repair their rail systems, into the State of Good Repair program. TriMet is the only recipient of these funds in Oregon and will see funding grow significantly as the program's funding level grows.

### “New Starts” Fixed Guideway Capital Investment Grants

MAP-21 continues the “New Starts” program, which provides large discretionary grants for development of new fixed guideway transit lines. Funding will decrease slightly compared to the high levels of funding appropriated in recent years (though it is still higher than under SAFETEA-LU). Continued funding for New Starts ensures that funding will be provided in the near future for Portland-Milwaukie Light Rail and creates an opportunity for the Columbia River Crossing to receive funding in upcoming years. Changes to the requirements for moving a project through the New Starts process may make it easier to deliver future projects.

### Transit Safety

MAP-21 creates significant new safety requirements for public transit providers and states. The bill directs US DOT to create a national safety plan for all types of public transportation, to set minimum safety performance standards for rolling stock and to establish a national safety certification training program for transit employees.

All recipients of FTA funding will be required to develop an agency safety plan and certify that the plan meets FTA requirements. These plans must include strategies for identifying risks and minimizing exposure to hazards, performance targets, and a staff training program, among other items. States are allowed to draft and certify plans for providers in small towns and rural areas, and FTA may allow plans for some small urbanized areas to be drafted and certified by the state. This requirement will likely impose additional workload on ODOT's Public Transit Division, and transit providers are also likely to face additional work and costs to comply with the requirements.

States with rail fixed guideway systems must have an approved state safety oversight program under which a state safety oversight agency assumes oversight responsibilities. MAP-21 includes a formula grant program that will provide federal funding for up to 80 percent of the cost of developing and carrying out these state safety oversight programs; the state must provide a non-federal match of at least 20 percent, and contributions from regulated transit providers and other federal funds are not allowed to be used for match. ODOT's Rail Division currently manages this program out of its Rail Safety Section, overseeing TriMet's MAX service, Portland Streetcar, and the Astoria Trolley. Rail Division expects that FTA's guidance on this program will require a significantly increased level of effort and more staff dedicated to the program. While the federal government will pay most of the cost of this program, ODOT will have to find a 20 percent non-federal match from non-State Highway Fund sources, which are perennially scarce.

## Highway and Motor Carrier Safety

In addition to the FHWA Highway Safety Improvement Program, which funds infrastructure projects, MAP-21 provides resources for highway safety programs that focus on encouraging safe behavior through education and effective traffic laws. These programs, most of which are run by the National Highway Traffic Safety Administration (NHTSA), were significantly renovated by MAP-21, and new safety planning and performance management requirements were put in place.

### Highway Safety Programs

MAP-21 significantly rearranges the federal safety programs that ODOT's Transportation Safety Division administers. It creates six incentive programs that provide funding to states that implement specified safety programs. Oregon will likely qualify for five of these programs in 2013 and four of the programs in 2014. Overall, Oregon may receive less funding under the NHTSA programs than in the past.

The following are the MAP-21 incentive programs and the likely amount of funding Oregon expects to receive, assuming each state qualifies for the incentives:

- *Occupant Protection*: Oregon will likely receive less than \$500,000 in 2013 (down from \$525,000 in 2012).
- *Traffic Information*: Oregon will likely receive less than \$450,000 in 2013 (down from \$500,000 in 2012).
- *Impaired Driving*: The majority of funding under the incentive programs is directed toward impaired driving countermeasures. Oregon will likely receive \$1.6 million in 2013 (the same as 2012).
- *Distracted Driving*: Depending on NHTSA's interpretation of the eligibility criteria for this grant, Oregon may not qualify for this program because of multiple exceptions to the state's prohibition on texting and handheld cell phone use while driving. If Oregon is not disqualified due to these exceptions, the state will likely receive about \$270,000 under this program in 2013, but the state will not qualify in 2014 due to additional criteria the state has to meet in the program's second year.
- *Motorcyclist Safety*: Oregon will likely receive \$50,000 in 2013 (down from \$100,000 in 2012).
- *Graduated Driver Licenses*: Oregon is not expected to receive any funding under this program because the state's graduated driver licenses do not meet the standards included in MAP-21. In fact, only one state is expected to qualify under the prescriptive requirements of MAP-21.

Developing applications for all of these programs—particularly new programs— will require substantial effort by the Transportation Safety Division (TSD). These applications are all to be included in the Highway Safety Plan that is submitted to NHTSA each year.

Under MAP-21, this plan will need to include a much higher level of data and analysis supporting the funding choices, and it will also need to report on performance measures NHTSA has developed in collaboration with the Governors Highway Safety Association. The plan will also be due on July 1, two months earlier than previously, which presents some challenges to TSD.

### Strategic Highway Safety Plans

As under SAFETEA-LU, the Highway Safety Improvement Program includes a requirement to develop and implement a Strategic Highway Safety Plan (SHSP). Oregon's Transportation Safety Action Plan (TSAP) serves as the state's SHSP. The requirements for the SHSP are significantly rewritten, with new requirements for structure, content, and the schedule for updating the plan. The requirement for reporting the top 5 percent of most hazardous locations is eliminated, but there are new requirements about reporting the effectiveness of the program based on performance measures set by FHWA. While Oregon's TSAP is policy-based, MAP-21 requires the SHSP to be more detailed and specific at a project selection level.

### Performance Measures

MAP-21 includes significant performance measures for safety. Under HSIP, states will be required to establish targets and report on progress toward meeting these targets for fatalities and serious injuries per vehicle mile travelled and for the total number of serious injuries and fatalities. Under the NHTSA programs, states will measure and report both core outcomes—such as rates and totals of fatalities and total serious injuries—as well as behaviors and activities like seat belt use and law enforcement activities.

*See the section on Performance and Asset Management for more information.*

### Motor Carrier Safety Assistance Program

MAP-21 continues the Federal Motor Carrier Safety Administration's Motor Carrier Safety Assistance Program (MCSAP), which Oregon uses to pay for truck inspection and safety activities. MAP-21 modifies the MCSAP "maintenance of effort" (MOE) requirement by setting a fixed period as the base for calculating MOE. This change will have the effect of reducing ODOT's MOE financial obligation and avoiding increases in future years.

### Motorcoach Safety

Responding to concerns about a number of bus crashes that caused significant fatalities, MAP-21 includes provisions increasing oversight of the motorcoach industry. This includes completion of a rulemaking requiring states to conduct annual inspections of commercial motor vehicles used to transport passengers and a requirement for periodic safety reviews for providers of motorcoach services. Annual vehicle inspections will result in an increased workload for MCTD staff, as could periodic review of motorcoach operators if FMCSA expects the state to participate in this effort.

## Freight Policy

For the first time, MAP-21 would set up a federal freight policy framework to help guide state and federal investments in efficiently moving goods. While no freight-specific funding is included—the formula freight program proposed in the Senate was stripped from the final bill, and the Projects of National and Regional Significance Program was not directly funded—these new policies will help ensure more strategic investment of resources that should benefit Oregon’s traded-sector dependent economy.

### National Freight Network

Under MAP-21, the U.S. Department of Transportation (US DOT) will establish a national freight network (NFN) to assist states in strategically directing resources toward improved system performance for efficient movement of freight on highways. The NFN will consist of a primary freight network (PFN) of not more than 27,000 miles that that are most critical to the movement of freight, the portions of the Interstate System not designated as part of the primary freight network, and critical rural freight corridors designated by states based on criteria included in the bill.

Based on FHWA’s definition of major freight corridors, which appears to be the basis for the PFN, the entire length of both Interstate 5 and Interstate 84 through Oregon are likely to be included in the PFN. The Oregon Transportation Commission may be able to designate other routes in Oregon—particularly the strategic freight corridors identified in the Oregon Freight Plan— as critical rural freight corridors, provided they meet the criteria in the bill.

### National Freight Strategic Plan

US DOT is tasked with developing a national freight strategic plan in consultation with state DOTs and other appropriate public and private transportation stakeholders. The plan is to include an assessment of the condition and performance of the national freight network, an identification of highway bottlenecks on the national freight network that create significant freight congestion problems, forecasts of freight volumes for a 20-year period, an identification of major trade gateways and national freight corridors that connect major population centers, trade gateways, and other major freight generators for current and forecasted traffic and freight volumes, strategies to improve freight intermodal connectivity, and best practices for improving the performance of the national freight network and to mitigate the impacts of freight movement on communities, among others. Although the language of MAP-21 is fairly highway-centric, US DOT has set up a multimodal Freight Policy Council to develop a freight plan that includes all modes.

US DOT is also tasked with developing new tools and improving existing tools to support an outcome-oriented, performance-based approach to evaluate proposed freight-related and other transportation projects. These tools will assist ODOT in its freight planning efforts.

### Freight Performance Measures

Under the new performance management system, US DOT is tasked with developing a number of freight-related performance measures, including freight movement on the Interstate, performance of the Interstate System, performance of the non-Interstate National Highway System, bridge conditions on the National Highway System, and pavement conditions on the Interstate.

*See the section on Performance and Asset Management for more information.*

### Projects of National and Regional Significance

US DOT is tasked with submitting a report to Congress that identifies projects of national and regional significance that meet certain criteria (including significantly improving the performance of the nation's highways, generating national economic benefits, reducing congestion, and improving transportation safety). US DOT is to survey states to generate this list of projects.

### State Freight Plans

MAP-21 directs US DOT to encourage each state to develop a freight plan that provides a comprehensive plan for the immediate and long-range planning activities and investments of the state with respect to freight. ODOT has already completed development of the Oregon Freight Plan (OFP) in coordination with stakeholders, though some of the elements in MAP-21's list of suggested plan elements—particularly specific performance measures to guide freight-related investment decisions and an inventory of facilities with freight mobility issues such as bottlenecks—are not specifically included in the OFP.

### State Freight Advisory Committees

MAP-21 directs US DOT to encourage each state to establish a freight advisory committee consisting of a representative cross-section of public and private sector freight stakeholders. The Oregon Freight Advisory Committee serves the purposes described in the bill, including advising the state on freight-related priorities, issues, projects, and funding needs and serving as a forum for discussion for state transportation decisions affecting freight mobility.

### Reduced Match for Freight Projects

To encourage states to invest in freight projects, MAP-21 allows for a reduced non-federal matching share for projects that will improve the efficient movement of freight and are identified in a state freight plan. However, since Oregon already benefits from a reduced federal match rate due to the large portion of the state's land managed by the federal government, this provision is not likely to prove particularly useful.

## Performance and Asset Management

Perhaps the most far-reaching policy change in MAP-21 is the shift to a performance-based program. Since its inception, the federal surface transportation program has included relatively little accountability for outcomes. MAP-21 changes this, instituting a performance management system that will measure the condition and performance of the transportation system and require states and MPOs to set targets and report on progress.

Performance management will help improve the invest of federal resources and show the public what their investment of tax dollars is buying. However, it has significant potential for unintended consequences, particularly for states such as Oregon that already have strong performance management systems in place and that will have to adapt to new requirements that may not represent an improvement over their existing systems.

It is likely that federal measures will differ from the measures Oregon currently uses and may not be as effective at measuring the right things. For example, FHWA will likely use structural deficiency to measure bridge conditions, which is a narrower measure than ODOT's measure of non-distressed bridges; similarly, FHWA will likely use International Roughness Index (IRI) data for pavement conditions, but IRI measures pavement smoothness rather than structural condition. What's more, federal measures are likely to be more highway-centric than Oregon's set of multimodal measures, which could encourage states to focus investment in highways rather than enabling analysis of trade-offs among modes. In the long-term, ODOT may be required to start managing to the federal measures rather than to the state's broader set of measures.

Because of the significant implementation challenges surrounding the new federal performance management system, ODOT has created a Performance and Asset Management Working Group that will coordinate on policy questions and implementation across the agency, including seeking to influence the implementation of the federal system.

### National Goals

MAP-21 lays out seven national goals that will serve as the basis for the performance management system:

- Safety
- Infrastructure condition
- Congestion reduction
- System reliability
- Freight movement and economic vitality
- Environmental sustainability
- Reduced project delivery delays

### **Performance-Based Planning and Programming**

MAP-21 requires that states and MPOs develop a performance-based approach to transportation planning and decisionmaking. This approach will integrate into the planning process and into state and regional plans the goals, objectives, performance measures and targets under the federal performance management system. Performance measures and targets under the performance management system will need to be considered by states and MPOs when developing policies, programs and investment priorities reflected in plans and transportation improvement programs. Statewide plans will need to include a description of the performance measures and targets used in assessing the transportation system and a system performance report. The statewide transportation improvement program will need to include a discussion of the anticipated effect of the program toward achieving the state's performance targets.

### **Highway Program Performance Management**

The most significant performance management requirements fall on the federal highway program. Not later than 18 months after enactment of MAP-21, US DOT, in consultation with state DOTs, MPOs and other stakeholders, will issue rules that establish measures based on direction in the bill. Most measures will be tied to the major highway programs under which states and MPOs receive their funding.

### **National Highway Performance Program**

Under the NHPP, US DOT will establish performance measures in a number of areas:

- pavement conditions on the Interstate
- pavement conditions on non-Interstate NHS routes
- bridges on the NHS
- performance of the Interstate
- performance of the non-Interstate NHS

While setting measures for pavement and bridges will be relatively easy, performance is not defined in the bill, and it is not clear what metrics US DOT will use.

### **Highway Safety Improvement Program**

US DOT will establish measures for the number of serious injuries and fatalities serious and the rate of serious injuries and fatalities per vehicle mile traveled.

### **Congestion Mitigation and Air Quality Improvement Program**

US DOT will establish measures for traffic congestion and on-road mobile source emissions.

### **Freight Movement**

US DOT will establish measures to assess freight movement on the Interstate.

## Highway Program Performance Measures

National Goal Area	Program	Performance Measure(s)
Safety	HSIP	Serious injuries per VMT Fatalities per VMT Number of serious injuries Number of fatalities
Infrastructure condition	NHPP	Bridge condition on NHS Pavement condition on the Interstate Pavement condition on non-Interstate NHS
Congestion reduction	CMAQ	Traffic congestion
System reliability	NHPP	Performance of the Interstate Performance of the non-Interstate NHS
Freight movement and economic vitality	(NHPP)	Freight movement on the Interstate
Environmental sustainability	CMAQ	On-road mobile source emissions
Reduced project delivery delays	None	None

### Target Setting

After US DOT establishes the measures and metrics under each of these areas, states will have one year to set performance targets. MPOs will also set targets no later than 180 days after states set targets, and states and MPOs are required to coordinate their target-setting (though neither has to approve the other’s targets). States are required to report on their progress in meeting these targets every two years, starting four years after enactment.

### Financial Consequences

Consequences for failure to meet targets are generally relatively mild. Under the NHPP, a state that does not achieve or make significant progress toward achieving the targets for two consecutive reports will have to document actions the state will take to improve their ability to achieve the target. Under HSIP, a state that has not met or made significant progress toward meeting the targets faced a minimum spending requirement.

The bill also sets financial consequences for states that fail to meet minimum condition thresholds or see safety deteriorate on some roads. States where structurally deficient bridges make up more than 10 percent of the deck area of bridges on the NHS face a minimum spending requirement for bridges on the NHS. Oregon is currently at about 4 percent, though over time deterioration of bridges and inadequate funding to replace them will likely push Oregon over this threshold; however, the spending requirement for failing to meet this threshold is actually less than ODOT currently spends on NHS bridges.

US DOT will also set a minimum condition threshold for pavement conditions on the Interstate, and any state with Interstate pavement conditions that fall below this threshold will face a minimum spending requirement. While Oregon is likely to be well above this threshold for some time, over time inadequate funding could cause pavement conditions to deteriorate to the point that Oregon’s Interstates fall under the threshold. Tripping the

penalty in this case would require ODOT to spend more on Interstate paving than the agency currently spends. States that see their fatality rate on rural roads increase will face a minimum spending requirement on rural roads.

### NHS Asset Management Plan

Closely tied to the highway performance management system is the requirement that states develop a risk-based NHS asset management plan designed to preserve the condition of the NHS and improve its performance. This plan will include strategies that lead to a program of projects that will make progress toward achievement of the state's targets for NHS condition and performance. The plan must include a description of the conditions of bridges and pavement on the NHS as well as asset management objectives and measures, identification of performance gaps, lifecycle cost analysis, a financial plan, and investment strategies. Both state and local NHS routes must be included. As a leader in asset management, ODOT is well-positioned to fulfill this requirement, though the federal plan differs in some ways from the state asset management program.

### Safety Performance Measures

In addition to the performance measures for the Highway Safety Improvement Program, MAP-21 includes a performance management system for the NHTSA programs focused on driver behavior. Under the NHTSA programs, states will measure and report on a variety of areas in both core outcomes and underlying behaviors and activities.

- *Motor Vehicle-Related Traffic Fatalities:* Metrics will include annual fatality total, the annual VMT-based fatality rate, annual totals by contributing factors, and annual totals by person category.
- *Motor Vehicle-Related Serious Injuries:* This will include only the annual total of serious injuries.
- *Observed Seat Belt Use:* This will include drivers and front seat outboard passengers.
- *Traffic Law Enforcement:* This set of measures will include impaired driving arrests, seat belt citations, and speeding citations.

Performance will be reported through each state's annual Highway Safety Plan, which will include documentation of current safety levels for each measure, targets for each measure, and a justification for each target.

### Transit Asset Management

MAP-21 subjects public transportation to performance and asset management requirements, though these are generally limited to the condition of capital assets, including equipment, rolling stock, infrastructure and facilities. US DOT will establish performance measures based on state of good repair standards, and recipients of FTA funding will establish performance targets, develop a transit asset management plan, and report on the condition of their assets and their progress toward meeting their targets.

## Streamlining Project Delivery

Following on efforts under SAFETEA-LU and FHWA's Every Day Counts Initiative, MAP-21 makes significant efforts to streamlining the process of developing and delivering transportation projects. Defining accelerating project delivery and reducing costs associated with delays as an important national goal, MAP-21 takes a "death by a thousand cuts" approach to attempting to slay the dragon of delay: Rather than one or two major changes to requirements, MAP-21 includes numerous relatively small-scale changes. Added together, these changes hold the potential to save time and money, though the effects are likely to be relatively modest.

Much of the language of MAP-21 in this area lacks specificity, leaving much to the interpretation of US DOT. FHWA and FTA implementing regulations are needed to clarify and breathe life into many provisions. As a leader in streamlining project delivery while protecting the environment, ODOT intends to take an aggressive approach to implementing these provisions of MAP-21, seeking to find ways to deliver projects faster, at lower cost to taxpayers, and with better environmental outcomes.

### Categorical Exclusions

MAP-21 attempts to streamline delivery of routine projects with minimal environmental impacts that are "categorically excluded" from in-depth analysis under the National Environmental Policy Act (NEPA).

MAP-21 designates a number of types of projects as categorical exclusions (CEs) that do not require completion of an environmental assessment (EA) or environmental impact statement (EIS). In most cases, these projects already qualify as CEs, though documentation required to classify them as such may be reduced as a result of these and other MAP-21 changes.

- Repairs to highways and bridges damaged by emergencies will qualify as categorical exclusions, so long as reconstruction begins within two years and occurs in the same location with the same design and dimensions as the original road. Because of the requirement to use the same design, this will be useful only where a section of road already met design standards and does not need to be improved.
- Projects within the operational right of way will qualify as CEs. Most projects that are built within ODOT and local agency rights of way already qualify as CEs, so the provision may not provide much benefit.
- Projects that receive \$5 million in federal funding or less, or where the estimated cost is \$30 million and no more than 15 percent is from federal funds, will qualify as CEs. Most FHWA projects that meet these dollar thresholds already qualify as CEs.

SAFETEA-LU created a pilot program to allow several states to assume responsibility for categorical exclusions, including classifying the documents and defending decisions in the legal system. MAP-21 takes this off of pilot status and makes it permanent and available to all states. ODOT did not apply to participate in the SAFETEA-LU pilot but will explore whether this could be an opportunity in the future.

States are encouraged to continue developing programmatic agreements with US DOT to determine on behalf of FHWA whether a project qualifies as a CE. If ODOT is able to make use of this provision, it could save time on project delivery because decisions on right of way acquisition and construction could be made sooner without having to wait for final FHWA approval of the CE classification.

### Multimodal Projects

Currently many multimodal projects are co-lead by FTA and FHWA. Because the two agencies apply their NEPA regulations differently, the level of NEPA documentation can vary depending on which agency is providing the funding. For instance, where projects funded by FHWA would typically require preparation of a CE, FTA projects of the same type may require preparation of an EA.

MAP-21 allows the Secretary to designate one agency as the lead authority; this should reduce time needed for FHWA/FTA coordination. It also allows the lead authority to apply a categorical exclusion of the cooperating agency under certain conditions. For instance, if FTA is designated as the lead authority and the project is funded under one grant, FTA can designate the project as a CE using FHWA's list of categorical exclusions. These changes are likely to reduce the number of EA's that are prepared for multimodal projects.

### Integration of Planning and Environmental Review

MAP-21 allows US DOT to adopt planning products such as studies into the NEPA process if certain conditions are met, including allowing for public comments on the product, obtaining concurrence from participating agencies, no significant new information is available that is likely to invalidate the planning product, the product was developed by engaging in active consultation with federal, state and tribal agencies, and adoption occurs within five years of the original product's approval.

This provision could present a significant opportunity to reduce project delivery costs and delays. Currently, much work completed in the planning process has to be redone during NEPA because it doesn't comply with NEPA requirements. Therefore, planning products may need to include additional information in order to be used in NEPA, and ODOT's planning and environmental staff will need to collaborate to modify current approaches. Lack of specificity in the language of MAP-21 will require coordinating with FHWA on how this provision can be put into action.

### Advance Acquisition of Right of Way

MAP-21 relaxes restrictions on when property can be acquired during the NEPA process. States can use their own funding to acquire property and can request authorization to use federal funds for early acquisition after certifying in writing that the purchase will meet the conditions listed in the bill, particularly that it won't have any significant adverse environmental impact and won't limit the choice of reasonable alternatives under the NEPA process or influence federal approval under NEPA. All early acquisitions must be voluntary; condemnation is not allowed.

This could enable a more expeditious acquisition of right of way and more timely project delivery. However, because of significant discretion in implementation given to US DOT and lack of specificity in the legislative language, there remains significant uncertainty about how FHWA will implement this provision and whether it will prove particularly useful.

### Mitigation

MAP-21 allows federal highway funds to be used for mitigation banking or other third-party mitigation arrangements, effectively allowing "mitigation by check". MAP-21 also allows for a state or MPO to develop programmatic mitigation plans to address environmental impacts for future projects. This provision could allow ODOT to protect and enhance the environment on a large scale rather than on a project by project basis. By putting mitigation into the planning process, it could also take mitigation discussions out of NEPA and result in time savings during project delivery.

### Accelerated Decisionmaking

In an effort to accelerate decisionmaking and break logjams, MAP-21 allows US DOT to call meetings with the agencies involved in a project to ensure all parties are on schedule, and it also provides for issue resolution by the President if necessary. Allowing US DOT to call such a meeting on its own (which can be done under current law only if the project sponsor or Governor requests a meeting) creates a risk of transferring control of the schedule from the project sponsor to US DOT.

In addition, financial penalties are imposed on federal agencies that fail to issue a decision, permit or approval within 180 days unless the project sponsor hasn't provided adequate information. This could lead to requests for additional information as agencies near the 180 day limit and seek to extend their decisionmaking timeframe.

### Completing Complex Projects

MAP-21 requires US DOT, if requested, to provide technical assistance to project sponsors for projects for which more than two years has elapsed since development of an Environmental Impact Statement (EIS) began. As ODOT has just a handful of projects undertaking an EIS, this provision may or may not benefit any ODOT projects.

### Limitation on Claims

MAP-21 shortens the statute of limitations for filing a challenge to a federal agency's issuance of a permit, license or approval from 180 days to 150 days. This may allow for more rapid conclusion to lawsuits.

### Combining Final EIS and Record of Decision

MAP-21 allows US DOT to combine the Final EIS (FEIS) and record of decision (ROD) into a single document rather than two separate documents spaced 30 days apart. This could reduce NEPA completion timeframes for major projects by 30 days.

### Letting of Contracts

MAP-21 allows a request for proposals (RFP) to be issued for all phases of planning, design and construction, but it specifies that award of a contract for final design and construction cannot occur until the NEPA process is complete. While ODOT has issued RFPs in this fashion before, MAP-21 provides a level of certainty that there will be no NEPA-related conflict of interest. Issuing an RFP prior to NEPA completion can shave one or more months off the procurement process.

## Other Policy Issues

### National Highway System Expansion

MAP-21 attempts to standardize the National Highway System (NHS) across states by expanding the NHS to include urban and rural principal arterials, the main thoroughfares that carry heavy volumes of traffic. Of the approximately 600 miles of Oregon road that were added to the NHS on October 1st, about three quarters are on state highways operated by ODOT, while about one quarter are on local roads. Many of these local roads function as main streets for communities and serve commercial areas and central business districts.

There are significant implications of expanding the NHS. Projects on NHS routes generally have to receive a design exception from FHWA or ODOT if they do not meet design standards in the AASHTO Green Book and the Oregon Highway Design Manual. Because MAP-21's performance management system is strongly focused on the NHS, conditions on local roads will factor into whether Oregon meets its targets for the condition and performance of the NHS.

To respond to concerns from local governments and other stakeholders about the potential implications of this expansion, ODOT has formed a NHS Expansion Working Group consisting of technical experts within ODOT, representatives of FHWA, and local governments that will work through these issues. This will include streamlined ways of dealing with projects that do not meet design guidelines, including for features to enhance safety and mobility for non-motorized users. In order to ensure some level of consistency in NHS routes across the state, NHS and principal arterial designations will be assessed as part of the functional classification review that will take place in 2013; some routes that do not function as principal arterials and thus do not merit inclusion in the NHS may be removed as part of this review.

### Tolling

MAP-21 modifies federal statutes that define when projects may be tolled. Under MAP-21, tolling will be permitted in the following cases:

- Construction of a new road, bridge, or tunnel.
- A toll-free bridge or tunnel can be reconstructed or replaced and converted into a toll facility.
- A toll-free non-Interstate federal-aid highway can be reconstructed and converted into a toll facility.
- New lanes can be tolled on an expanded highway (regardless of whether it's on the Interstate), so long as the number of toll-free lanes is not reduced.
- Tolling can occur on a reconstructed, restored, or rehabilitated Interstate facility if the number of toll-free lanes is not reduced.

In the short term, this change in federal policy is not expected to have any impact on Oregon, as the only project expected to use tolling—the Columbia River Crossing—is a bridge reconstruction project and thus can be tolled.

### Metropolitan Planning Organizations

Despite threats in the House and Senate passed bills to raise the population threshold for forming an MPO to 100,000 or 200,000, MAP-21 leaves that threshold at 50,000. As a result, Oregon's seven MPOs—Portland, Salem/Keizer, Eugene/Springfield, Corvallis, Bend, the Rogue Valley, and Kelso/Longview (which reaches across the Columbia to take in Rainier)—will all remain in existence. In addition, the Albany and Grants Pass areas that were recently designated as urbanized areas by the Census Bureau will become MPOs, while Milton-Freewater will become part of the Walla Walla MPO.

### Rest Area Commercialization

MAP-21 relaxes prohibitions on commercial activities within rest areas slightly, allowing activities including commercial advertising and media displays, items designed to promote tourism in the state, tickets for events or attractions of a historical or tourism-related nature, travel-related information, and lottery machines. The bill also allows states to permit a private party to operate these commercial activities. States can permit the installation of signs that acknowledge the sponsorship of rest areas. Any revenues received from the commercial activities must be used to cover the cost of building, operating, and maintaining the rest area.

It is not clear how this change would impact vending that currently occurs in rest areas by the Oregon Commission for the Blind under state and federal law. ODOT may need to develop a policy for rest area sponsorship and signing. Given that the Oregon Travel Experience (OTE) currently operates a number of Oregon rest areas, ODOT will need to work with OTE and others—including the Commission for the Blind—on any issues that arise.

### Commercial Driver Licenses

MAP-21 changes federal policies related to commercial driver licenses (CDLs), which impacts ODOT's Driver and Motor Vehicle Services (DMV) Division. Failure to comply with these changes could trigger penalties that would cost ODOT about \$17 million in federal highway funding in 2013, growing to \$34 million in 2014. DMV will likely undertake information system upgrades and update rules and state statutes in order to come into compliance with the subsequent federal regulations and system standards.

Among the changes:

- US DOT must develop a national clearinghouse for records relating to alcohol and controlled substance testing of commercial motor vehicle operators. The clearinghouse will function as a repository for records relating to positive test

results and test refusals. State licensing officials will be required to access the records of those applying for a CDL before issuing or renewing a license.

- States will need to comply with new CDL information system standards, including electronic exchange of driver history records that includes posting of convictions and withdrawals. Failure to comply risks the loss of significant amounts of federal highway funds. The agency will apply for federal grants to pay for the necessary information system projects as funds become available.
- US DOT will establish a national registry of medical examiners, and states will need to have the capability to receive an electronic copy of a medical examiner's certificate. This will require information system upgrades and changes to DMV processes.

### Electric Vehicle Charging Stations

MAP-21 allows Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding to be used for electric vehicle (EV) charging stations outside of CMAQ-eligible areas with air quality challenges. In addition, other types of funds can be used for EV charging stations in park and ride lots. However, the FHWA Oregon Division Office has already allowed ODOT to use Surface Transportation Program funds for EV charging stations to supplement ODOT's TIGER II grant, which limits the impacts of these changes.

## Research and Development

Under SAFETEA-LU the transportation research programs were highly prescriptive, with earmarks and designated programs taking up most of the research budget; in fact, the specific designations of funding were greater than the actual available funding. As with many other areas, MAP-21 simplifies this structure, reducing the number of specifically designated programs and limiting the number of University Transportation Centers while giving US DOT more discretion on which programs to fund.

### State Planning and Research Program

MAP-21 continues the State Planning and Research (SPR) program, which is funded by a 2 percent takedown of selected funding categories. ODOT expects to receive SPR funding, which pays for much of the staff and activities of the Transportation Development Division, at levels comparable to recent years.

### Strategic Highway Research Program

The second Strategic Highway Research Program (SHRP 2) is a major investment in applied transportation research that has developed hundreds of products that are at or nearing the stage of deployment. MAP-21 allows for a portion of the implementation funding for SHRP 2 to come out of each state's SPR funding if three quarters of states agree to this assessment. AASHTO's Board of Directors recently approved by the required vote an assessment of 4 percent of each state's SPR funds; Oregon will contribute about \$380,000 in 2013 and 2014. SHRP 2 implementation will provide opportunities for ODOT to participate in pilot projects and other deployment activities.

### University Transportation Centers

SAFETEA-LU greatly increased the number of University Transportation Centers (UTC) and largely earmarked these to specific universities. Those benefiting included the Oregon University System, which created the Oregon Transportation Research and Education Consortium (OTREC) as a research institution centered at Portland State University and operated in partnership among a number of the state's universities.

MAP-21 prunes back the UTC structure. It will now include:

- 5 national centers funded at \$3 million each year.
- 10 regional centers funded at \$2.75 million each year.
- 20 Tier 1 centers at \$1.5 million each year.

OTREC was awarded a national center in a competitive grant process in 2012 after SAFETEA-LU's earmarks expired, and Oregon State University is participating in a consortium that secured a regional center grant. In 2013 and beyond, universities will

have to re compete for these grants, which will be fewer in number. This could possibly reduce the amount of UTC research funding available to Oregon's universities.

### **National Research Programs**

MAP-21 reduces the number of specifically designated research programs, giving more discretion to the Secretary of Transportation in directing nationwide research, development and technology activities. ODOT has been successful in tapping funding from some grant programs that are no longer specifically funded, though many may be funded at the discretion of US DOT. The federal share for cooperative research and development agreements is increased from 50 percent to 80 percent, making cooperative agreements more attractive.

## Appendix: Oregon Highway and Transit Funding by Program

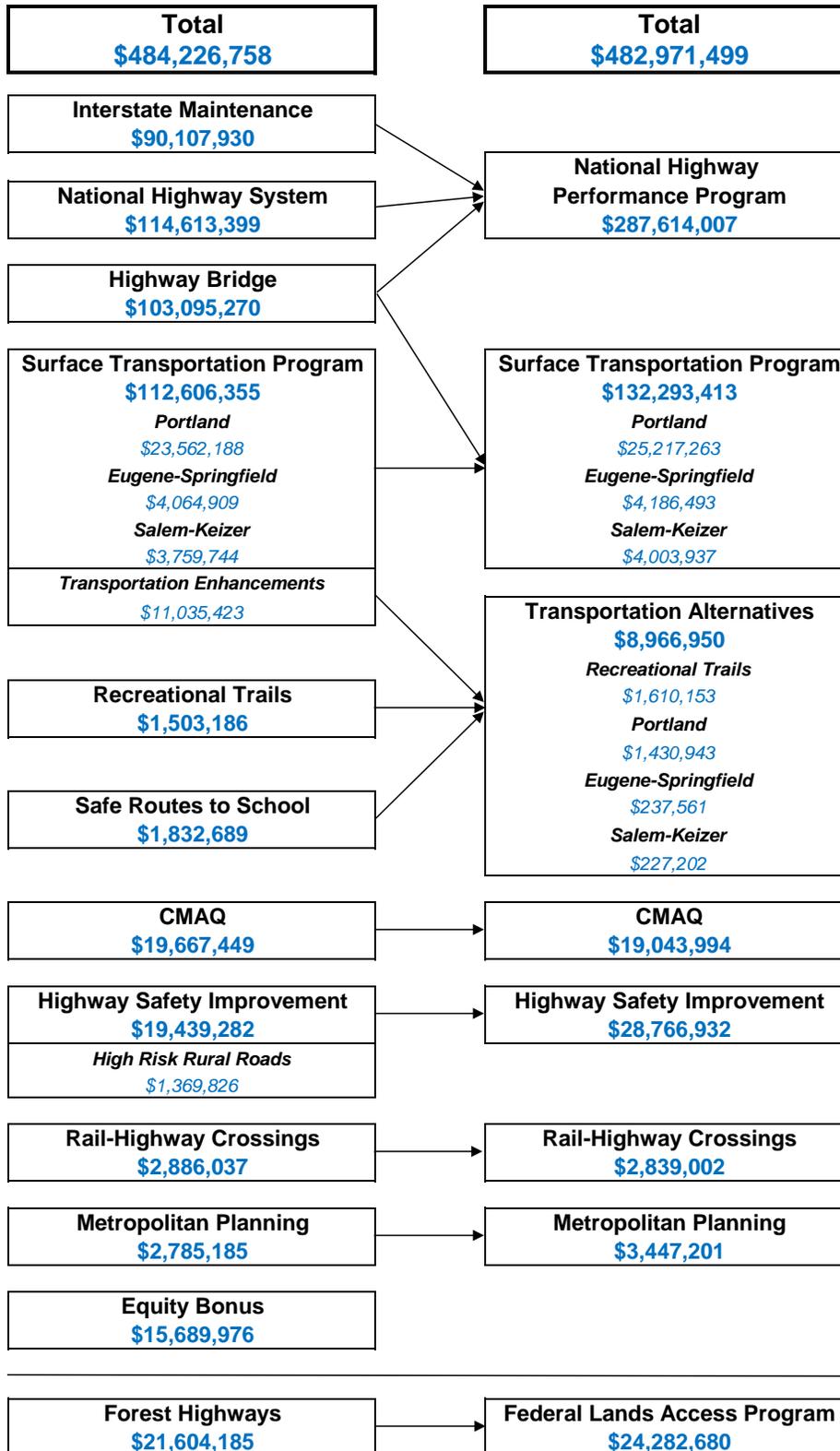
The following charts show estimates of Oregon's federal highway and transit formula funding under each program in MAP-21 for federal FY 2013 and compare these amounts to similar programs under SAFETEA-LU in FY 2012.

Most of these figures are estimates by ODOT staff and are subject to change as new calculations are released by US DOT. In particular, transit figures are based on a partial year continuing resolution that is based on SAFETEA-LU funding levels rather than the levels set in MAP-21.

# Oregon Federal Highway Funding

## SAFETEA-LU FY 2012

## MAP-21 FY 2013



All figures for MAP-21 are ODOT estimates and subject to change.  
Amounts in italics are sub-programs or set-asides within a program, and the funding is not additive.

# Oregon Federal Transit Funding

## SAFETEA-LU

FY 2012

<b>Total*</b> <b>\$80,806,411</b>
<b>Urbanized Areas*</b> <b>\$53,344,517</b> <i>Portland-Vancouver*</i> <i>\$39,072,871</i> <i>Eugene</i> <i>\$5,614,650</i> <i>Salem</i> <i>\$5,037,309</i> <i>Rogue Valley</i> <i>\$1,835,129</i> <i>Bend</i> <i>\$707,376</i> <i>Corvallis</i> <i>\$1,058,474</i>
<b>Job Access and Reverse Commute*</b> <b>\$2,050,082</b> <i>Portland-Vancouver*</i> <i>\$842,110</i> <i>Eugene</i> <i>\$171,819</i> <i>Salem</i> <i>\$264,484</i> <b>Small Urban Areas</b> <i>\$286,390</i> <b>Rural Areas</b> <i>\$485,279</i>
<b>Rural Areas</b> <b>\$9,782,034</b>
<b>Fixed Guideway Modernization</b> <i>Portland</i> <b>\$11,811,820</b>
<b>Seniors and People With Disabilities</b> <b>\$1,632,194</b>
<b>New Freedom*</b> <b>\$1,162,565</b> <i>Portland-Vancouver*</i> <i>\$524,472</i> <i>Eugene</i> <i>\$78,524</i> <i>Salem</i> <i>\$76,290</i> <b>Small Urban Areas</b> <i>\$148,768</i> <b>Rural Areas</b> <i>\$334,511</i>
<b>Metropolitan Planning</b> <b>\$833,310</b>
<b>Statewide Planning</b> <b>\$189,889</b>

## MAP-21

FY 2013

<b>Total*</b> <b>\$97,065,032</b>
<b>Urbanized Areas*</b> <b>\$57,033,813</b> <i>Portland-Vancouver*</i> <i>\$39,641,389</i> <i>Eugene</i> <i>\$5,261,953</i> <i>Salem</i> <i>\$5,222,080</i> <i>Rogue Valley</i> <i>\$2,359,417</i> <i>Bend</i> <i>\$1,189,396</i> <i>Corvallis</i> <i>\$1,639,131</i> <i>Albany</i> <i>\$874,999</i> <i>Grants Pass</i> <i>\$704,653</i>
<b>Bus and Bus Facilities*</b> <b>\$6,412,291</b> <i>Portland-Vancouver*</i> <i>\$3,271,403</i> <i>Eugene</i> <i>\$606,466</i> <i>Salem</i> <i>\$605,318</i> <b>Small Urban Areas</b> <i>\$694,890</i> <b>Rural Areas</b> <i>\$1,234,215</i>
<b>Rural Areas</b> <b>\$11,633,237</b>
<b>State of Good Repair</b> <i>Portland</i> <b>\$17,194,937</b>
<b>Seniors and People With Disabilities*</b> <b>\$3,494,188</b> <i>Portland-Vancouver*</i> <i>\$1,426,449</i> <i>Eugene</i> <i>\$234,904</i> <i>Salem</i> <i>\$226,831</i> <b>Small Urban Areas</b> <i>\$759,253</i> <b>Rural Areas</b> <i>\$846,751</i>
<b>Metropolitan Planning</b> <b>\$1,075,626</b>
<b>Statewide Planning</b> <b>\$220,940</b>

\*FTA amounts are apportioned by urbanized area, so Portland-Vancouver figures and program totals include funding for C-Tran in Washington.

Amounts in italics are set-asides within a program, and the funding is not additive.

All figures for MAP-21 are estimates based on extrapolating out from the funding available under the continuing resolution and are subject to change.

For sake of simplicity, small amounts of 5307 funding provided to the Longview-Kelso (Rainier) and Walla Walla (Milton-Freewater) urbanized areas are not shown separately but are included in the 5307 and overall totals.